Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Inquiry Concerning the Deployment of Advanced	)	
Telecommunications Capability to All Americans in a	)	
Reasonable and Timely Fashion, and Possible Steps to	)	GN Docket No. 04-54
Accelerate Such Deployment Pursuant to Section 706 of	)	
the Telecommunications Act of 1996	)	
	)	
Fourth Notice of Inquiry	)	
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COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION

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COMMENTS OF THE
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The United States Telecom Association (USTA),[1] submits these comments in response to the Notice of Inquiry[2] in the above-referenced proceeding. As the Commission notes, this NOI begins its fourth inquiry into "'whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion,'" pursuant to section 706 of the Telecommunications Act of 1996 (Act).[3]

[1] USTA is the Nation's oldest trade organization for the local exchange carrier industry. USTA's carrier members provide a full array of voice, data and video services over wireline and wireless networks.

[2] *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, Notice of Inquiry, GN Docket No. 04-54 (NOI).

[3] NOI, ¶1, *quoting* §706(b) of the Telecommunications Act of 1996, Pub.L. 104-104, 110 Stat. 56 (1996), reproduced in the notes under 47 U.S.C. §157.

SUMMARY AND INTRODUCTION

The President of the United States recently called for universal, affordable access to broadband technology by the year 2007.[4] With the President's support for a national goal for broadband technology that is affordable and encourages investment, the Commission's inquiry about the status and future of advanced telecommunications capabilities in the United States comes at an opportune moment for taking action to meet the challenge established by the President.

In 2001, USTA maintained that advanced telecommunications services were being deployed at a reasonable and timely rate. Today, data collected by the Commission confirms continued growth in such services. However, much of this growth has been led, in fact dominated, by the cable industry, which is not regulated in the manner that incumbent wireline telephone companies are in their provision of broadband services. Although high-speed, advanced telecommunications services are broadly available in the United States, the Commission must act now to ensure that the availability of such services is spread to all corners of the country, particularly rural areas. In addition, the Commission must take action to encourage continued investment in broadband networks and technological advances that will permit providers of broadband services to offer those services at increasingly higher speeds. Accordingly, the Commission should permit all companies to operate under market-based rules in their provision of advanced services and continued support should be available to service providers in rural high cost areas for telecommunications network investment. Fostering competition under market-based rules will help sustain the recovery of the U.S. economy,

[4] Remarks of President Bush on Homeownership, Albuquerque, New Mexico, Mar. 26, 2004, http://www.whitehouse.gov/news/releases/2004/03/20040326-9.html (President's March 26 Remarks).

through increased investment in the telecommunications sector, job creation and growth in the telecommunications and related sectors, and improvements in health care, education, and Americans' overall quality of life, and it will put the United States back at the international forefront of the information future.

DISCUSSION

I. Advanced Telecommunications Services Are Broadly Available, But Further Deployment and Implementation of Faster Speeds Are Necessary To Retain America's Competitive Position in the World Economy.

A. *Is Advanced Telecommunications Capability Being Deployed to All Americans? Is Deployment Reasonable and Timely?*

USTA commented in the Third Notice of Inquiry in this proceeding that the "nationwide deployment of advanced telecommunications services is taking place on a reasonable and timely basis."[5] As evidenced by the Commission's latest report on the status of high-speed services for Internet access, the deployment of and subscription to advanced services continues to steadily grow.[6] The fact that there are subscribers to high-speed services in all 50 states, the District of Columbia, Puerto Rico, and the Virgin Islands, and in 91% of the zip codes in the United States is indicative that such high-speed services are broadly available.[7] As of June 2003, there were 23.5 million high-speed lines connecting homes and businesses to the Internet,[8] whereas in June

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[5] *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, Third Notice of Inquiry*, Comments of the United States Telecom Association, CC Docket No. 98-146 (Sept. 24, 2001) (USTA Comments).

[6] *See generally High-Speed Services for Internet Access: Status as of June 30, 2003*, Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission (rel. Dec. 2003) (2003 High-Speed Services Report), available at www.fcc.gov/wcb/stats.

[7] *See id*. at 1.

[8] *Id*. at 2.

2000 there were 7.1 million such lines.[9] Similarly, in 2000, subscribers were reported in 75% of the nation's zip codes and in 1999 they were reported in 56% of zip codes,[10] compared with 91% in 2003. The Commission's recent data validates USTA's previous comments as particularly relevant today: "the data provides numbers which lead to a single, uncontroverted, conclusion: rapid deployment of advanced telecommunications services continues to occur on a nationwide basis."[11]

Not only are advanced telecommunications services broadly available, but they are also competitively available. The Commission's 2003 High-Speed Services Report also speaks powerfully to this point. The Commission reported increases by all providers of high-speed connections – coaxial cable systems (cable modem services), wireline ADSL, satellite, fixed wireless technologies, and fiber optic – in the first half of 2003.[12] As of that date, there were 13.7 million cable connections, 7.7 million ADSL connections, and 0.9 million combined satellite, fixed wireless, and fiber optic connections.[13] As the provider of nearly twice as many connections as wireline ADSL, coaxial cable is clearly dominant in the provision of advanced telecommunications services. However, the increasing growth of high-speed connections other than wireline ADSL and coaxial cable – high-speed connections by means of satellite and fixed wireless technologies increased by 12% during the first half of 2003 and fiber optic connections increased by 5%[14] – demonstrate the strength of competitive alternatives for obtaining advanced

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[9] *See generally High-Speed Services for Internet Access: Subscribership as of December 31, 2000*, Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission (rel. Aug. 2001) (2000 High-Speed Services Report).

[10] *Id*.

[11] USTA Comments at 4.

[12] 2003 High-Speed Services Report at 2.

[13] *Id*.

[14] *Id*.

telecommunications services. There may yet be another significant high-speed services competitor in the electric power line companies. In fact, electric power line companies may well be the third ubiquitous provider – like providers of cable and wireline ADSL – of broadband pipes to the home.[15] Similarly, providers of mobile wireless services have begun selling wireless Internet broadband access. For example, by installing a software program and a wireless modem into the PC card of a laptop computer, Verizon Wireless allows its customers to connect to the Internet at broadband speeds – with average downstream speeds between 300 and 500 kbps and high higher capabilities.[16] AT&T and Nextel are also offering high-speed, wireless Internet connections.[17] Data such as this was used by the Commission in its determination that there is robust intermodal competition in the broadband market and its decision not to require

[15] The Commission has initiated an inquiry to obtain information related to the provision of high-speed services over power lines. The Commission notes that power lines reach virtually every community in the country and stresses that broadband over power lines could provide additional competition for high-speed services and provide rural and underserved areas, which are difficult to serve, with access to such services. *See generally Inquiry Regarding Carrier Current Systems, Including Broadband Over Power Line Systems*, Notice of Inquiry, ET Docket No. 03-104 (rel. April 28, 2003). Further, the National Telecommunications & Information Administration recently release a report concluding "that 'rigorous technical solutions' would protect critical federal systems and enable BPL [broadband over power lines] to realize its promise as the 'third broadband wire into the home.'" *NTIA Report Lays Groundwork for Responsible Deployment of Broadband Over Power Lines (BPL)*, National Telecommunications & Information Administration, United States Department of Commerce News (rel. April 27, 2004).

[16] *See* Walter S. Mossberg, *Verizon Is Crossing the U.S. With Speedy True Wireless Access*, The Wall Street Journal, Apr. 8, 2004. In addition to laptop computers, Verizon Wireless also plans to offer wireless broadband Internet access, titled BroadBand Access, on PDAs and cell phones. Currently, the service on laptops is available in the Washington, DC and San Diego areas, but eventually it may become available in all U.S. metropolitan areas. A new cellphone technology, called EV-DO (or Evolution-Data Optimized) enables Verizon Wireless to offer this high-speed, wireless access. *See id*.

[17] AT&T's EDGE service offers a nationwide high-speed Internet service at average speeds of 100 to 150 kbps. *See* Mossberg, Apr. 8, 2004. Nextel has just begun offering similar service in the Research Triangle Park area of North Carolina. Yuki Noguchi, *Nextel Begins Selling Wireless Broadband: Successful Trial Leads to N.C. Rollout*, The Washington Post, Apr. 15, 2004.

unbundling of broadband elements under section 251 of the Act, which decision has been affirmed by the Court of Appeals for the D.C. Circuit.[18]

B. *Does Deployment of Advanced Telecommunications Capability in the United States Impact Our Role in the International Arena?*

Despite the fairly steady deployment of high-speed services across the United States, this deployment is not sufficiently broad and the speeds of these services are not sufficiently fast to rank the United States as a leader in the global broadband race. In a recent speech at the Alliance for Public Technology Forum, the Communications Workers of America's Executive Vice President, Larry Cohen, cited a recent report by the International Telecommunications Union (ITU), which stated that the "United States – the largest economy in the world – ranks 11th among nations in the number of households with high-speed Internet service. [The United Sates] lag[s] behind South Korea, Taiwan, Canada, Denmark, Japan, Sweden, Belgium, Hong Kong, Iceland, and the Netherlands."[19]

Although the Commission cites to the ITU report in the NOI,[20] it is worthwhile to emphasize the data reported, comparing the high speed telecommunications available in the top ten countries to those generally available in the United States: in South Korea, 70 percent of

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[18] *See generally Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications* Capability, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket Nos. 01-338, 96-98, 98-147 (rel. Aug. 21, 2003) (Triennial Review Order); *see also United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (USTA II).

[19] Remarks by Larry Cohen, Executive Vice President, Communications Workers of America at Alliance for Public Technology Policy Forum, Mar. 5, 2004, http://www.cwa-union.org/issues/cohen/index.asp?ID=624 (CWA Remarks). *See also ITU Internet Reports: Birth of Broadband*, International Telecommunications Union, Geneva, p. 1, Figure 1.1, "Broadband penetration rates around the world," Sept. 2003.

[20] *See generally* NOI, ¶43.

households have broadband at 1 to 2 megabits per second; in Japan, there are 14 million broadband subscribers and they have access to Yahoo broadband packages of 12 megabits per second downstream and wireless services at 3-G speeds; yet, in the United States only seven out of 100 households have a broadband connection, which is usually a 500 kilobit per second DSL connection or a one to three megabits per second cable modem connection.[21] With data like this, there is no doubt that the United States needs to work harder to elevate its status in the global economy and regain the competitive edge in the international telecommunications market. President Bush agrees, stating that despite the fact that broadband use has tripled from seven million subscribers in 2000 to 24 million lines today, the United States' ranking in the industrialized world is "not good enough for America."[22] President Bush's solution for making the United States more competitive in the international arena is to have the "government clear regulatory hurdles so those who are going to make investments do so."[23] Clearly, it is time to unleash the potential of free-market forces in the telecommunications industry.

II. The Future For Advanced Telecommunications Services Holds Great Promise, But That Future Depends On Freedom to Compete in a Market-Based Economy, Not Competition Managed by the Government.

Now it is time for the Commission to take action, using the data available, to address the status of broadband deployment and broadband speeds available across the country, which will certainly help improve the United States' competitive status on breadth of deployment and level of speeds of broadband services as compared to other industrialized countries. Because

[21] *See* CWA Remarks, Mar. 5, 2004.

[22] Remarks of President George W. Bush at the American Association of Community Colleges Annual Convention, Minneapolis, Minnesota, Apr. 26, 2004, http://www.whitehouse.gov/news/releases/2004/04/20040426-6.html (President's April 26 Remarks).

[23] *Id*.

advanced telecommunications services are already broadly and competitively available in the United States, incumbent local exchange carriers (ILECs) should be freed from the yoke of burdensome, economic regulations with regard to their offerings of such broadband services. More importantly, however, the future growth and advancements in broadband services that will enable the United States to be a leader in the global broadband race will depend on the termination of government-managed competition and the implementation of market-based solutions. As President Bush aptly stated, "Broadband is going to spread because it's going to make sense for private sector companies to spread it so long as the regulatory burden is reduced – in other words, so long as policy at the government level encourages people to invest, not discourages investment."[24]

A. *What Actions Can Accelerate Deployment?*

The Commission can facilitate the ongoing deployment of advanced telecommunications services even more rapidly by eliminating the application of the regulations of the past to incumbent wireline providers of these services. The world of communications has changed fundamentally in the past few years. As noted previously, heated competition is underway between cable, wireless, satellite, and local phone companies. Soon, electric power line companies may also compete to provide high-speed services and mobile wireless companies have already begun to compete for such high-speed services. All of these companies provide functionally equivalent advanced telecommunications services. Although they provide them over different technologies, they should be regulated in the same manner.

Subjecting ILECs that provide advanced telecommunications services over wireline ADSL or fiber optics to continued regulation – such as tariff filing, cost support, and pricing

[24] President's April 26 Remarks.

requirements as part of their provision of high-speed services, as well as other economic regulations under Title II and the Commission's *Computer Rules* – inhibits them from competing against the dominant players in the market, coaxial cable providers,[25] which are free from the same or similar regulatory restrictions. Based on the D.C. Circuit Court's affirmation of the Commission's decision in the Triennial Review Order, and subject to further appeal or review, ILECs will not be subject to section 251 unbundling requirements for the broadband capabilities of hybrid loops and fiber-to-the-home (FTTH) or to line sharing requirements, allowing them to better compete with cable modem service providers. A recent report released by the American Council for Capital Formation found that American businesses would increase their capital expenditures on average $6.8 billion annually over a period of five years (2004-2008), "particularly in the earlier years when DSL spending accelerates," if the D.C. Circuit Court's decision on the Triennial Review Order is upheld.[26] This finding affirms that the actions taken by the Commission to eliminate most unbundling requirements for next-generation networks are helping the Commission achieve its goals of encouraging investment in broadband infrastructure.

Continued regulation of the high-speed services provided by ILECs discriminates against wireline ADSL and fiber optic technologies in favor of other technologies such as cable, wireless, satellites, and electric power lines. This discrimination stifles competition and investment in deployment of advanced telecommunications capability and is inconsistent with

[25] "Today, cable access is the most prevalent form of broadband access in the United States, with a customer base that is roughly twice that of DSL providers . . . . On average cable modem access speed is 708 kbps." Wayne T. Brough, *State Economies Can Benefit From Broadband Deployment*, CSE Issue Analysis, CSE Freedom Works Foundation, Dec. 1, 2003 at 6. In comparison, "the average DSL rate over copper wire is 467 kbps." *Id*., *citing* Robyn Greenspan, *Your Speeds May Vary*, Internet Com., Apr. 25, 2003.

[26] *Macroeconomic Effects of Telecommunications Deregulation*, Special Report of the American Council for Capital Formation, May 2004. *See also Study: Billions of Spending Hinges on "Triennial Review" Order Outcome*, TR Daily, May 4, 2004.

the goals of section 706 of the Act. Telecommunications is critical to a sustained recovery of the U.S. economy and the telecommunications market cannot be allowed to flounder. "[G]overnment regulation is not adapting to changes in the telecom industry at a pace aligned with the rate of technological advancements. Current regulatory paradigms are facilitating the industry's economic stagnation and curtailing investment in the nation's broadband infrastructure."[27] Regulation will not speed the innovation that leads to economic progress and other social benefits.[28] Innovations, continued deployment, and consumer demand for broadband and advanced telecommunications services will help drive new cycles of investment and job creation and growth,[29] not only in the telecommunications market but in other sectors of the economy, as well as drive improvements in health care, education systems, the economy in general, and overall quality of life. "Unleashing the full potential of broadband communications

[27] James Alleman, Sonia Arrison, Diane Katz, and Steven Wildman, *Directions for the Next New Age of Telecom Regulation*, New Millenium Research Council, Jan. 2004.

[28] "To the extent that regulatory and legal uncertainty cloud the future, investors will be reluctant to finance increased broadband deployment, which reduces economic opportunities for businesses while frustrating consumer demand for higher speed access and bandwidth-intensive technologies. These lost opportunities translate into fewer jobs and less output. With the economy just beginning to recover, policymakers should acknowledge the potential benefits of widespread broadband deployment, and work to eliminate regulatory and legal uncertainties that inhibit the capital expenditures necessary to build the next-generation network." Brough at 18.

[29] A TeleNomic Research study in 2002 found that "broadband deployment would generate 1.2 million jobs." Brough at 9. The study states that employment gains would occur in "(1) jobs from deploying and maintaining broadband capital expenditures; (2) jobs within sectors that manufacture the equipment that is used by the broadband network or by consumers to access the network; and (3) jobs that rely on the network, such as developing content or applications, and in other supporting industries." *Id*. However, "this study assumes no legal or regulatory barriers to widespread deployment of broadband technologies." *Id*. *See also* Robert W. Crandall, Charles L. Jackson, and Hal J. Singer, *The Effect of Ubiquitous Broadband Adoption on Investment, Jobs, and the U.S. Economy*, Criterion Economics, L.L.C. for the New Millenium Research Council, Sept. 2003 ("it is possible that more than 1.2 million jobs could be created as a result of ubiquitous residential broadband adoption"); CWA Remarks, Mar. 5, 2004 ("it's estimated that a universal broadband network will create 1.2 million jobs making it the best jobs program for our faltering economy").

could generate hundreds of billions of dollars per year in consumer value. In addition, lifting all remaining regulations on all broadband services, thereby unleashing this potential, would have an immediate impact on the economy by stimulating greater investment and accelerated job and income growth. For these investments to be justified, however, regulators must assure investors that the returns from investing in broadband technologies will not be appropriated through the regulatory process."[30]

The United States cannot continue to keep the nation's broadband future on hold by subjecting certain competitors to outdated policies and regulations. In order to accomplish the Act's section 706 goals of encouraging innovations in the advanced telecommunications market and speeding deployment of such services to all communities across America, all competitors in the market must be allowed to compete under free-market rules.

B. *What is "Advanced Telecommunications Capability"?*

The Commission notes in the NOI that the current definition of "advanced telecommunications capability" and "advanced services" is "services and facilities with an upstream (customer-to-provider) and downstream (provider-to-customer) transmission speed of more than 200 kilobits per second (kbps)."[31] The Commission has also defined the term "high-speed" as "services and facilities with over 200 kbps capability in at least one direction."[32] The Commission asks whether these current definitions should be altered given the rapid technological advances in the marketplace. USTA acknowledges that at some point in the future it may be appropriate for the Commission to alter these definitions, but at this time USTA encourages the Commission to retain these base line definitions. In order to keep pace with

[30] Crandall at 1.

[31] NOI, ¶11.

[32] *Id*.

technological advances in delivery speed of broadband services, the Commission may want to add another category to its broadband data collection forms to collect information on broadband services offered at speeds above 500 kbps. Delivering faster speed advanced services to customers is certainly an important goal for USTA's members, as it is undoubtedly for their competitors, but companies must build the facilities or develop the technology to use existing facilities in order to provide higher speeds and faster services to customers, upon customer demand for such speeds and services. Again, market-based rules will encourage companies to continue making network investments and technological advances that make higher speeds and faster services possible in response to consumer and market demand.

USTA member companies are already working to respond to customer demand for increased speeds and faster services. For example, a Sacramento newspaper recently reported a story about a consumer that decided the three megabits a second he was getting from his cable Internet service provider was not enough to play Xbox Live.[33] When USTA member SureWest Broadband began offering 10 megabits per second, the customer snapped up the competitive high-speed service.[34] SureWest Broadband can offer these competitive services because it is laying high-capacity fiber-optic lines throughout Sacramento and other nearby neighborhoods. Similarly, another USTA member, Frontier Communications, "is readying technology to zip cable TV over its phone lines in an effort to defend its . . . territory" in a nearby Sacramento neighborhood.[35] It is clear, however, that companies must have the network facilities to provide the demanded higher speeds and faster services. All of this depends on appropriate customer

[33] Clint Swett, *Battle lines laid out: Sacramento-area competition heats up as Internet, cable and telephone companies jostle for customers*, Sacramento Bee, Apr. 29, 2004.

[34] *Id*.

[35] *Id*.

demand, investments in infrastructure, time for implementation, and most of all a regulatory environment that encourages and protects such investments and business plans.

III. Becoming a Leader in the International Arena for Advanced Telecommunications Services Means the Challenges Facing Rural America For High-Speed, Advanced Telecommunications Services Must Be Addressed.

Without a strong economy for advanced telecommunications services in rural areas of the United States, the country as a whole cannot lead the international community in the speed of these services or in the number of customers to whom these services are available. "In order to make sure [broadband technology] gets spread to all corners of the country, it must be affordable."[36] Certainly, rural telecommunications carriers must first be able to build or modify networks, addressing the challenges of long distances and high costs, that will permit them to provide advanced telecommunications services. One important way this can be accomplished is through distribution of the funds appropriated by Congress to the Rural Utilities Service (RUS) for rural broadband loans. With adequate finances and continuing technological advances, telecommunications carriers will be able to meet consumer demand in rural areas for high-speed, advanced services. The Commission should support dispersion of such funds by the RUS to providers of broadband services in rural America. Another important way the Commission can assist rural providers of broadband service is to provide them with the option of offering broadband services on a private carrier basis, as USTA generally advocates in these comments, or on a common carrier basis, which would require such rural ILECs to make their DSL service (or other broadband service) available to all customers in a service area on an indiscriminate basis, but would allow these rural carriers to preserve their ability to offer broadband Internet transport as a tariffed common carrier transport service both in and outside of the NECA pool.

[36] President's April 26 Remarks.

CONCLUSION

Free markets have served America well. Innovation and economic progress depend on free markets, not heavy regulation. Today there is competition in the market for advanced telecommunications services, but the regulatory treatment of certain providers of advanced services does not correspond to the competitive status of the market. The Commission must level the playing field to provide regulatory parity for advanced services provided by incumbent local exchange carriers, so that all parties are equally free to compete vigorously for consumers' business. Finally, the Commission must not forget the importance of broadband deployment in rural America as an important part of the recovery of the U.S. economy and the position of the United States in the global economy.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Meena Joshi, do certify that on May 10, 2004, the aforementioned Comments of The United States Telecom Association were electronically filed with the Commission through its Electronic Comment Filing System and were electronically mailed to the following:

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